

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6547 of 1984

with

SPECIAL CIVIL APPLICATION No 5312 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAICHANDNAGAR CO.OP.HOU.SOC.

Versus

GANDHINAGAR DIST. PANCHAYAT

Appearance:

MR MI PATEL & MR AJ PATEL for Petitioners

MRS SIDDHI TALATI for Respondent-State and its
Officers

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/09/97

ORAL JUDGEMENT

1. As the petitioners in both these special civil applications are common and it pertains to the same land in dispute, they are taken up for hearing together with

the consent of the parties and are being disposed of by this common order.

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2. That Shri Keshavlal Hargovandas Patel, Sendhabhai Hargovandas Patel, Dashrathbhai Hargovandas Patel, Manubhai Hargovandas Patel and Ishwarbhai Motibhai Patel were the owners of lands bearing Survey Nos. 225/1, 227/1, 227/2 and 228/1 of Village Motera, Taluka Gandhinagar, District Gandhinagar. Shri Narsinhbhai Pidhabhai and Ukabhai Kuberbhai were the joint owners of land bearing Survey NO.224/A of the same village. Shri Hasanbhai Usmanbhai, Kulsimbibi Usmanbhai, Subiyabibi Usmanbhai and Jainabini Usmanbhai are the holders of interest in land bearing Survey No. 224/B of the same village. The holders of the land of Survey Nos. 225/1, 227/1, 227/2 and 228/1 agreed to sold the same to the petitioner-society in the year 1963 when it was in a formative stage. Similarly, the holders of Survey Nos. 224/A and 224/B also agreed to sold the lands to the petitioner-Society under an agreement of sale in the month of August, 1973.

3. The Urban Land Ceiling Act, 1976 has come into force in the State of Gujarat and as the lands aforesaid were lying within five kms. periphery of the Ahmedabad Municipal Corporation, were included in the Ahmedabad agglomeration. The petitioner-Society and the owners of the lands aforesaid applied to the respondent-State under section 20 of the aforesaid Act for exemption from the application of the provisions of the said Act. This application of the petitioner-Society and the owners of the lands came to be allowed under the order dated 20th December, 1979 of the State. The exemption under section 20 of the Act, 1976 was granted subject to certain terms and conditions as contained in the order. For the purpose of deciding this case, two conditions, conditions No.5 and 10 are relevant. As per the aforesaid two conditions, it was required that the sale deeds of the lands in question should be executed in favour of the petitioner-Society within a period of nine months from the date thereof. The condition No.10 contemplates that the Society shall complete the construction of the units of the Society within a period of two years and thereafter this exemption qua the remaining land shall automatically stand cancelled or revoked. The petitioner-Society could not be registered till the exemption was granted and therefore on the issuance of exemption certificate it made an application for its registration under the provisions of the Gujarat

Cooperative Societies Act to the competent authority viz. District Registrar, Cooperative Societies, Gandhinagar. One Ramanlal Amtharam Patel and another person who were the co-sponsors of the petitioner-Society raised certain objections against the registration of the petitioner-Society but ultimately the objections were overruled and the petitioner-Society was registered under the Cooperative Societies Act vide order of the District Registrar, Cooperative Societies, Gandhinagar dated 5th July, 1982. The said Ramanlal Amtharam Patel filed civil suit No.91/80 in the Court of Civil Judge (J.D.), Gandhinagar against the petitioner-Society and the owners of the lands except the owners of the land bearing Survey No.224/A praying therein for restraining them from executing the sale deeds of the lands in favour of the petitioner-Society. The learned Trial Court on 2-6-1980 issued interim injunction as prayed for by said Ramanlal Amtharam Patel and the same was served on the petitioner and some of the owners of the lands on or about 12th June, 1980. The suit was contested by the petitioner-Society and the land owners and on 11th September, 1980 the interim injunction granted came to be vacated. However, on the application of the plaintiff, the stay was continued till 18th September, 1980. Time limit for executing the sale deeds was going to expire on 19th September, 1980, and as such, the petitioner on 15th September, 1980 applied to the respondent-State for extension of time for executing the sale deeds in view of the facts aforesaid. After vacation of the interim relief aforesaid, the owners of the lands of Survey Nos. 225/1, 227/1, 227/2 and 228/1 prepared the sale deeds of their lands. However, the plaintiff has taken up the matter further in appeal but the aforesaid sale deeds had been executed before the Appellate Court granted the interim injunction. In the meantime before the expiry of nine months' limit, the owners of the land bearing Survey No.224/A had executed the sale deed in favour of the petitioner-Society. After the injunction granted by the Appellate Court, the sale deeds in respect of the remaining lands could not be executed in favour of the petitioner-Society. That appeal came to be dismissed on 24th October, 1980.

4. The petitioner produced all the relevant material aforesaid before the State Government in support of his application for extension of time for executing the sale deeds. By the end of October, 1980, the sale deeds in respect of the lands bearing Survey No.225/1, 227/1, 227/2, 228/1 and 224/A had been executed in favour of the petitioner and the possession of the lands have been handed over by the owners thereof to the

petitioner-Society. After execution of the sale deeds, the petitioner applied to the Mamlatdar, Gandhinagar for consolidation of the lands of Survey Nos. 225/1, 227/1, 227/2 and 228/1 into one block and the learned Mamlatdar under its order dated 27th December 1980 has been pleased to consolidate the same into one block.

5. Ramanlal and owners of the land bearing Survey No.224/B in the meanwhile approached to the respondent No.3-State under the provisions of the Cooperative Societies Act and sought the stay of the operation of the order of the District Registrar, Cooperative Societies under which the petitioner-Society was ordered to be registered. The State Government has passed the order of the stay of registration of the petitioner-Society. However, ultimately, it was vacated. Said Ramanlal ultimately approached this Court by way of special civil application No.3416/81 and the said matter ultimately came to be compromised between the parties thereof, the petitioner-Society and owners of the land bearing Survey No.224/B. The application filed by the petitioner for extension of time for execution of the sale deed came to be rejected by the State Government under the orders dated 25th October, 1982 and 18th May, 1983. The petitioner and the owners of the land filed special civil application No.4357/83 before this Court and at the time of final hearing of the said application it was though desirable by all the concerned that in view of the policy decision taken by the respondent-State regarding the granting of exemption to the Cooperative Societies under the provisions of section 20 of the Urban Land Ceiling Act under the circular dated 30th March, 1984 the petitioner-Society should make a review application to the third respondent-State for reconsideration of its earlier order and accordingly the petitioner withdrew the aforesaid special civil application. The petitioner filed a representation for the extension of time for execution of the sale deed in respect of Survey No.224/B and for extension of time in the case of sale deeds of lands of other survey numbers. The petitioner-Society in the mean time had applied for permission to AUDA for development of the land purchased by it and such a permission has been granted by AUDA authority under its order dated 12th April, 1983. The petitioner's name has been entered in the Revenue record for the land of Survey Nos. 225/1, 227/1, 227/2, 228/1 and 224/A which was duly certified by the competent authority vide its order dated 7-7-1982. On 14th April, 1984, the petitioner applied to the respondent No.1 District Panchayat for grant of N.A. permission in respect of the lands bearing Survey Nos. 225/1, 227/1, 227/2, 228/1 and 224/A in respect of which

the sale deeds have been executed in its favour. The District Panchayat under its order dated 23rd June, 1983 rejected the said application of the petitioner. Aggrieved of the aforesaid order of the respondent No.1, the petitioner preferred an appeal before the Secretary (Appeals), Revenue Department of the Government of Gujarat, the second respondent herein and that appeal has also been dismissed by the respondent No.2 under its order dated 15th October, 1984. Hence, this special civil application before this Court.

6. The respondents have filed reply to this special civil application. The matter has come up for admission before this Court on 13th February, 1985. This Court has been pleased to issue pre-admission notice. On 10th April, 1985, rule was issued and parties were directed to maintain the status-quo as to construction.

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7. By this special civil application, the petitioner Society has challenged the order of the Collector, Gandhinagar dated 18th October, 1985 under which the entry of the land of Survey Nos. 225/1, 227/1, 227/2 and 228/1 certified in favour of the petitioner under the order of the Competent Authority dated 7-7-1982 was quashed and set aside and the order of the Government dated 30th June, 1986 passed in revision application of the petitioner under which the order of the Collector aforesaid has been confirmed.

8. In this special civil application, the facts have been given out by the petitioner that the petitioner-Society has constructed 50 tenements each having an area of 80 sq. yds. and 32 row houses each having an area of 42 sq. yds.. It has further been stated that 50% members of the petitioner-Society have already started to reside in the said houses and huge amount has been invested in the construction of the houses. There are about 230 members of the petitioner-Society who belong to lower middle class of the Society. They have invested their life time savings in the construction of their houses and many of them have taken the loans for construction of their houses.

9. The learned counsel for the petitioners in both these special civil applications raised manifold contentions challenging the validity of the orders impugned therein, but I do not consider it to be appropriate to go on all the contentions raised by him as now it is admitted position that the use of whole of the

land has been converted from agriculture to non-agriculture. The 50% of members of the petitioner-Society, 230 in number, have already raised the constructions and now they are residing therein.

10. I called the Secretary of the Revenue Department as well as the Secretary (Appeals), Revenue Department of the Government of Gujarat. The officers present in the court as well as the Government advocate do not dispute that the construction of the houses have been raised on the land by the members of the petitioner-Society. It is also not in dispute that the order of exemption granted in respect of these lands in dispute to the petitioner-Society and its owners has not been withdrawn. In the proceedings for the grant of N.A. permission in one petition, and against the entries of the lands in revenue record in the second petition, the authorities have taken a view that the sale deed executed has become invalid and inoperative as the period granted in the condition as provided in the order of grant of exemption under section 20 of the Urban Land Ceiling Act expired much before the execution of those sale deeds. The counsel for the petitioner has made a contention that the N.A. permission is not required for the land in question as per sec.117 of the Gujarat Town Planning and Urban Development Act, 1976 and in support of this contention he placed reliance on one decision of this Court. However, prima-facie I find merits in the aforesaid contention of the counsel for the petitioners, but I do not consider it to be proper to decide this contention finally as I propose to send both the matters back to the appellate authority to decide the matter afresh after taking into consideration the subsequent developments which have taken place.

11. Section 20 of the Urban Land Ceiling Act and particularly sub-section (2) thereof is a relevant provision which has to be briefly referred. The counsel for the petitioner contended that the authority who passed the order under sub-section (2) of section 20 of the U.L.C. Act and the authority who deal with the matter of N.A. permission and revenue entries are different. The entries in the revenue record which have been made in favour of the petitioner-Society have been cancelled only on the ground that the sale deeds were found to be invalid for the reason that the condition No.5 as contained in the order of grant of exemption made under section 20 of the U.L.C. Act has not been complied with. So both the orders in two different proceedings are passed only on the ground that the sale deeds were invalid as they were not executed within the stipulated

period as granted in condition No.5 of the order of the competent authority passed under section 20 of the U.L.C. Act. There is no dispute between the parties that the order passed by the authority under U.L.C. Act has not been recalled or cancelled.

12. Sub-section (2) of section 20 of the U.L.C. Act, 1976 empowers the State Government on its satisfaction where any of the conditions subject to which the exemption under clause (a) or clause (b) of sub-section (1) is granted is not complied with by any person, it shall be competent for it to withdraw by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly.

13. Sub-section (2) of the section 20 of the U.L.C. Act, 1976 though empowers the State Government to withdraw the permission as granted under sub-section (1) of the said section on satisfaction that the conditions are not complied with but it could have been done only after giving a notice and an opportunity of hearing to the affected persons. It is not the case of the respondent-State that in all the cases of the breach of condition subject to which the permission has been granted under sub-section (1) of section 20 of the Act, 1976 the same has to be withdrawn by the Government. In appropriate case while dealing with the matter of breach of condition and consequent withdrawal of permission as granted under sub-section (1) of section 20 of the Act, 1976, the State Government may also extend the period. There is no prohibition or bar under the Act, 1976 in the competence of the State Government to extend the time as granted for execution of the sale deed while passing the order under section 20 (1) of the Act, 1976.

14. There is another important question which calls for consideration - whether unless the permission granted under sub-section (1) of section 20 of the Act, 1976 is withdrawn by the State Government under sub-section (2) of the said section whether the sale deeds which have been executed though slightly after few days of the period granted for the same will become ipso facto illegal and invalid for all the purposes to come. While dealing with the matter of N.A. permission or correction of the entries in the land revenue record, if the respondent-State has come across a fact that the condition subject to which the exemption is granted is not fulfilled in a given case and sale deeds have been registered it could have referred the matter to the

competent authority to deal with the same under sub-section (2) of section 20 of the Act, 1976 or in case it itself has undertaken to pass the order considering it to be a case of violation of conditions as imposed under sub-section (1) of section 20 of the Act, 1976 then while considering the matter it was obligatory upon it to go on the question whether it was a deliberate or wilful or without any justification the non-compliance of the condition as imposed or there was a sufficient cause by which the petitioners have been prevented from getting the sale deed executed in their favour within time limit by the owners of the lands. On this aspect, the respondent-State has absolutely remained silent and the order impugned has been passed. However, as stated earlier, these matters are to be remanded back, and as such, no further discussion is required to be made.

15. In the result, both these special civil applications are allowed and the order annexure 'G' in the first petition dated 15th October, 1984 and the order annexure 'F' in the second petition dated 30th June 1983 passed by the Secretary (Appeals), Revenue Department, Government of Gujarat are quashed and set aside and the matters are remitted back to the said authority to restore the appeal and revision applications of the petitioners to their original number and to decide the same afresh after taking into consideration all the material facts as well as the subsequent developments which have taken place in accordance with law. It may also be open to the authority to recommend to the competent authority under the Act, 1976 to deal with the petitioner's case under sub-section (2) of section 20 of the Act, 1976. It shall be open to the petitioner to raise all the grounds in support of their appeal and revision applications before the said authority. It shall be the duty of the petitioner to bring on record all the subsequent events which have taken place before the authority. Till the appeal and revision are decided by the authority, the status-quo as ordered by this Court in these special civil applications shall continue. These are the old matters and as many as 230 members of the petitioner-Society are affected under the impugned orders, and as such, it is expected of the authority to decide the matter as expeditiously as possible but not later than six months from the date of receipt of certified copy of this order. Both the special civil applications and rule therein stand disposed of accordingly with no order as to costs.

zgs/-